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OLC 78-0487/37

2 NOV 1978

Office of General Counsel
Civil Service Reform Act of 1978

MEMORANDUM FOR: Director of Central Intelligence

FROM: Legislative Counsel

SUBJECT: Civil Service Reform Act of 1978

1. Action Requested: None; for your information only.
2. Background: The Congress has now passed overwhelmingly and forwarded to President Carter for his signature the Civil Service Reform Act of 1978. The following is a precis of the Act's various provisions which is intended only to familiarize you with the scope and nature of this important piece of legislation. My staff, in coordination with the Office of General Counsel and the Office of Personnel, will later forward to you and interested senior Agency officials a detailed analysis of those provisions contained in this legislation which will or may affect the Agency.
3. Discussion: The Civil Service Reform Act of 1978 (hereinafter referred to as the Act) is a comprehensive piece of legislation designed to make Presidential control over the several Executive Branch agencies a more manageable proposition than it has been. The Act also strives to make those holding management positions within the Civil Service more responsive to Administration programs and goals; and it establishes certain protections for Federal employees.
4. The Act is divided into nine separate titles which will, once they become law, serve to amend various sections of Title 5 of the United States Code. The brief analysis which follows, therefore, is broken down by title.

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-- Title I: Title I of the Act expresses the intent and desire of Congress that all Executive agencies of the Federal Government subscribe to several delineated "Merit Principles" in areas such as hiring, firing, retention and promotion of employees. These principles, although desired goals, are not mandatory and therefore have no real or apparent affect on this Agency.

Title I also, and more importantly, mandates that certain actions taken by Agency heads will be deemed to be "Prohibited Personnel Practices."

CIA, DIA and NSA, as well as other Executive agencies or units thereof whose principal function is the conduct of foreign intelligence or counterintelligence activities, are exempted from the provisions of this Title.

-- Title II: Title II of the Act establishes the authorities and responsibilities of the Office of Personnel Management (OPM), a Special Counsel and a Merit System Protection Board (MSPB), which are the successor agencies of the Civil Service Commission created pursuant to Reorganization Plan #2. Due to the CIA exemption described above, and others to be discussed below, the OPM does not reach and therefore has no affect upon the CIA. The Special Counsel and the MSPB are extraordinarily limited as to what actions they may take which might affect the CIA.

For example, the broad power of the Special Counsel to investigate employee allegations of "Prohibited Personnel Practices" are in toto inapplicable to CIA by virtue of the aforementioned CIA exemption from those actions designated as "Prohibited Personnel Practices."

In cases involving employee complaints regarding agency violations of law, mismanagement, waste of funds, abuse of authority, and so forth -- i.e., "whistle-blowers" -- strict guidelines are included in the text of the Act which prohibit disclosures [by the Special Counsel] prohibited by law or Executive order. This, in effect, underlines your responsibility to protect both classified and sources and methods information.

The Special Counsel may, however, under a similar provision receive employee complaints regarding the above stated matters from employees of this Agency. The Congress included further provision that, as to the receipt by the Special Counsel of protected information, he may require the relevant agency head to conduct an investigation into the allegations. However, the Congress caveats this by clearly stating that this does not authorize the disclosure [by the Agency] of the several classes and types of protected information. The Congress added an additional provision to the Act which directs the Special Counsel, when and if he receives information involving foreign intelligence or counterintelligence matters, to direct this information to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence. In sum, therefore, his power vis-a-vis CIA and related agencies appears to be limited in such cases to his ability to receive the complaint, insure that the SSCI and HPSCI are aware of the complaint's existence and that they receive all of the relevant material involved.

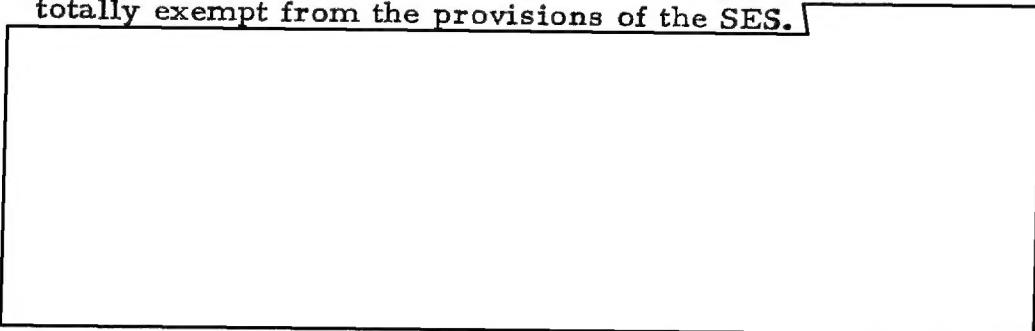
The Special Counsel may also investigate any alleged violations of subchapter III of chapter 73 of Title 5, U.S.C. (Hatch Act), as well as allegations regarding the arbitrary or capricious withholding of information requested under the FOIA. As to the latter power, the Congress has specifically excluded therefrom our various types of protected information.

-- Title III: Staffing. No affect on CIA.

-- Title IV: Title IV creates the new Senior Executive Service (SES). The SES is the management corps which will, rather than receiving promotions based largely on longevity, now be governed by how well they perform their managerial functions. High pay and bonuses will be available to those who perform above and beyond the call of duty. Those who perform in an unsatisfactory manner will, on the other hand, be liable for their poor performance and may, under the terms of the Act, be dismissed in a far simpler fashion than is the case at present.

The CIA, NSA and certain other agencies are totally exempt from the provisions of the SES.

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-- Title V: Title V details the newly created Merit Pay system for managers from GS-13 through GS-15. CIA, being exempt from the General Schedule established in Title 5 U.S.C., is thereby exempt from the Merit Pay scheme.

-- Title VI: Title VI grants the Office of Personnel Management the prerogative to conduct various types of Research and Demonstration Projects from time to time. CIA, DIA, NSA and other agencies or units thereof whose principal function is the conduct of foreign intelligence or counterintelligence activities are totally exempt from the several provisions of this title.

-- Title VII: This title creates a Federal Labor Relations Authority and new grievance procedures relative to labor-management relations. GAO, FBI, CIA, NSA, and other intelligence units are specifically exempted from this title's provisions.

-- Title VIII: Title VIII deals with grade and pay retention for those in positions that are reclassified by various provisions of the Act. CIA is, by being exempt from the General Schedule, also exempt from this title.

-- Title IX: Title IX includes several miscellaneous "Christmas Tree" provisions not easily insertable elsewhere in the Act. None of these several provisions affect this Agency in an unacceptable manner.

5. As stated earlier, this paper is not intended to be a definitive analysis of the Act, but rather is the precursor of a more detailed memorandum which will, after careful legal analysis by my staff attorneys who worked on the bill over the last year and those of the Office of General Counsel, be forwarded to all concerned Agency officials.

SIGNED

Frederick P. Hitz

cc: DDCI

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OP

DDA

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